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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,610	05/30/2001	Nobuhisa Hirai	Q64728	5530

7590 01/16/2004

SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,610

Applicant(s)

HIRAI ET AL.

Examiner

Lien T Tran

Art Unit

1761

[Handwritten signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 19-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant indicates in the response that a substitute specification is filed with the response; however, the substitute specification is not found in the response. There is no marked-up copy or clean copy.

Claims 1-10, 12-15, 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jp 878 in view of Nisperos-Carriedo et al for the same reason set forth in the previous office action.

Claims 11 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jp 878 in view of Nisperos-Carriedo et al , Orthoefer and further in view of Percel for the same reason set forth in the previous office action.

In the response filed Oct. 21, 2003, applicant argues Carriedo et al discloses a plasticizer; however, they disclose coating of vegetables, fruits, fungi etc.. and not the claimed coating agent. This argument is not persuasive. The Carriedo et al reference is not used alone in the rejection and is not used to show the coating agent as claimed. The Jp reference is used to the the coating agent as claimed; the Japanese reference also teaches to incorporate a plasticizer into the coating agent. The Carriedo et al reference is used to show that plasticizers claimed are known and it would have been obvious to one skilled in the art to use any known plasticizer in the coating agent disclosed by the Japanese reference. Applicant does not argue why it would not have been obvious to use the plasticizers disclosed by Carriedo in the coating agent disclosed in the Japanese reference. With respect to the Ortheofer reference, applicant argues Ortheofer does not teach or suggest the ratio of the coating agent. The Ortheofer reference is only relied upon to show that the plasticizers claimed are known

Art Unit: 1761

and that it would have been obvious to use such known plasticizers in the coating agent disclosed in the Japanese reference. It is not clear what ratio of coating agent applicant is referring to and the reference is not relied upon to show the coating agent. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant argues there is no motivation to combine the references; however, does not present argument as to why the references can not be combined. Applicant argues the rejection is based on hindsight. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to the rejection of claims 11 and 29-33, applicant makes the same argument as above and the argument is not found to be persuasive for the same reason set forth above. Additionally, applicant argues that it is impossible to use the fluidized-be chamber as disclosed in Percel for the coating of Nisperos-Carriedo. Applicant mischaracterizes the rejection; it is not suggested in the rejection to use the Percel process for the coating of Nisperos-Carriedo. The Nisperos-Carriedo is only relied upon

for the teaching of the plasticizers. Applicant further argues Orthoefer does not teach or suggest a coating method. The Orthoefer is not relied upon for the teaching of a coating method. As stated above, it is only relied upon for the teaching of the plasticizers.

Applicant's arguments filed Oct. 21, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Application/Control Number: 09/866,610

Page 5

Art Unit: 1761

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.

January 12, 2004

Lantra
LIEN TRAN
PRIMARY EXAMINER
Group 1700